

Chapter 17.60

Wetland Resources Overlay District (WRD)

17.60.010. **Purpose.** The purposes of establishing wetland protection areas are:

- A. To implement the goals and policies of the Junction City Comprehensive Plan;
- B. To satisfy the requirements of Statewide Planning Goal 5;
- C. To protect Junction City's wetland areas, thereby protecting the hydrologic and ecologic functions these areas provide for the community;
- D. To protect water quality and natural hydrology, to control erosion and sedimentation, and to reduce the adverse effects of flooding;
- E. To protect fish and wildlife habitat;
- F. To protect the amenity values and educational opportunities of Junction City's wetlands as community assets;
- G. To improve and promote coordination among local, state, and federal agencies regarding development activities near wetlands.

17.60.020. **Intent.** The Wetland Overlay District (WRD) is intended to conserve locally protected wetlands and Department of State Lands (DSL) approved wetland mitigation sites, consistent with the 2012 Economic, Social, Environmental, and Energy (ESEE) Analysis and the Goal 5 Administrative Rule (OAR Chapter 660, Division 23), while ensuring an economically feasible and beneficial use of property. The City will rely on the DSL to ensure adequate mitigation for development on wetlands lying outside this district.

17.60.030. **Definitions.** For purposes of this Chapter, the following words and phrases shall have the meaning ascribed to them herein:

- A. **ESEE Analysis** – Analysis required of local governments in developing a program to achieve Goal 5 for all significant resource sites. "ESEE consequences" are the positive and negative economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.
- B. **Feasible.** An action, such as a development project, mitigation, or preservation requirement, that meets all of the following conditions:
 - 1. Can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests that have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
 - 2. Provides a reasonable likelihood of achieving its intended purpose; and
 - 3. Does not physically preclude achieving the project's primary intended legal use or reduce the development potential on the property.

In determining an action's feasibility, the City may weigh the action's relative costs and public benefits, considered in the short- and long-term time frames.

- C. **Jurisdictional Delineation** - A current delineation approved by the Oregon Division of State Lands, and the U.S. Army Corps of Engineers if required, of the wetland boundary. Delineation is a precise map and documentation of actual wetland boundaries on a parcel, whereas a local wetland inventory boundary may only be a rough map with an accuracy target of 5 meters (approximately 16.5 feet).
- D. **Jurisdictional Determination** - Per 141- 90 Oregon Administrative Rules, a written decision by the Department of State Lands that waters of the state subject to regulation and authorization requirements of OAR 141-085, 141-089, 141-0100 and 141-0102 are present or not present on a land parcel. The Jurisdictional Determination may include a determination of the geographic boundaries of the area subject to state jurisdiction. A Jurisdictional Determination may, but does not necessarily, include a determination that a particular activity in a water of this state is subject to authorization requirements.
- E. **Jurisdictional Wetland** - Wetlands regulated by the U.S. Environmental Protection Agency, the Army Corps of Engineers, and the Oregon Department of State Lands. This includes all wetlands on the City of Junction City Local Wetland Inventory map. Activities that may affect these wetlands are subject to agency review and may be restricted or require permits before work may be done.
- F. **Locally significant wetland** - Wetlands that meet significance criteria set forth in OAR 141-086-0350. Locally Significant Wetlands are identified on the City of Junction City Local Wetland Inventory. Locally Significant Wetlands also constitute the Wetland Protection Area (unless otherwise indicated in this Chapter).
- G. **Local Wetlands Inventory (LWI)** – Maps and report entitled LOCAL WETLAND INVENTORY REPORT FOR JUNCTION CITY, OREGON as adopted as Appendix IV of the Comprehensive Plan and any subsequent revisions as approved by the Oregon Division of State Lands.
- H. **Oregon Freshwater Wetland Assessment Methodology (OFWAM)** - A wetland function and quality assessment methodology developed by the Oregon Division of State Lands.
- I. **Other Potentially Jurisdictional Wetlands** – All jurisdictional wetlands, mapped or not, are the jurisdiction of DSL. All wetlands are “potentially jurisdictional wetlands.” Wetlands on the Local Wetland Inventory map which are not identified as Locally Significant are considered “Probable Wetlands.”

These wetlands are not subject to City of Junction City wetland protection area standards, but, like all wetland areas, are subject to DSL notice/review and potentially subject to DSL permitting.

- J. **Probable Wetlands (PW)**- An area noted during the course of LWI field work that appears to meet, or does meet, wetland criteria but is small or of undetermined size, and is mapped as a point rather than a polygon on the LWI maps.
- K. **Wetland** - An area inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and which, under normal circumstances, does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
- L. **Wetland protection area** - An area subject to the provisions of this chapter that is constituted by wetlands determined to be locally significant as shown on the Local Wetland Inventory. The wetland protection area extends 20 feet from the mapped LWI boundary unless an onsite or off site determination or wetland delineation allows for a more refined estimation of the wetland boundary (See 17.60.050 and 17.60.080)

17.60.040. Determination of Locally Significant Wetlands and Locally Protected Wetlands. A determination of locally significant wetlands has been made by the City of Junction City in accordance with rules adopted by Division of State Lands (OAR 141-086-3000), and are identified on the LOCAL WETLAND INVENTORY REPORT FOR JUNCTION CITY, OREGON. In addition, a determination of local protection has been made by Junction City in accordance with rules adopted under OAR 660-023-0040(5) and 660-023-0050(1), and wetlands subject to local protection are identified on the City of Junction City's ESEE Analysis as adopted as Appendix IV of the Comprehensive Plan.

17.60.050. Wetland Protection Areas, Applicability. The provisions of this Chapter shall be applied to proposed development located within 20 feet of a locally significant wetland identified for local protection in the City of Junction City's ESEE Analysis. The provisions also apply to Department of State Lands (DSL) approved wetland mitigation sites. The provisions shall apply regardless of whether or not a building permit, development permit, or plan authorization is required. The provisions do not provide any exemption from state or federal regulations. Development impacts and mitigation within jurisdictional wetlands that are not protected by this district shall be reviewed and approved by DSL. These provisions shall not apply to properties that have been designated as within the WRD in error, provided that the claims of map error are verified by DSL.

17.60.060. Relationship to Other Regulations.

- A. These regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the City of Junction City.

- B. Compliance with the provisions of this Chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Department of State Lands Wetland Fill Permits or U.S. Army Corps of Engineers Section 404 permits). The applicant is responsible for complying with these requirements, apart from the process established in this Chapter.

17.60.070. Administrative Procedures.

- A. The administrative procedures followed during the wetland review process shall conform to the standards and requirements of the City of Junction City as contained in Junction City Municipal Code Chapter 17.150. This shall include, but not be limited to, timing, appeals, and fees associated with applications covered by this Chapter.

17.60.080. Application. Applications for development within, or partially within, the WRD shall be filed with City Hall on a form prescribed by the City Administrator. The application shall include:

- A. Fee(s) set forth in the City's fee schedule.
- B. A wetland delineation approved by the Oregon Division of State Lands, or, alternatively, an onsite or offsite determination, conducted or confirmed by Oregon Division of State Lands, that concludes the proposed activities will occur outside the jurisdictional wetland.
- C. A scale drawing that clearly depicts any LWI map wetland boundary within the subject parcel (or any wetland within 20 feet of the development on an adjacent parcel), property boundaries, and proposed site alterations including proposed excavation, fill, structures, and paved areas. If a wetland delineation has been completed, the drawing shall be based upon a professional survey, depicting the wetland boundary on a map of the surrounding area which shows the wetland, as set forth under Section 17.60.100 below.
- D. A written statement responding to the criteria established in 17.60.150.

17.60.090. Designation Criteria. Land and water areas designated within this overlay district include:

- A. Locally significant wetlands that have been identified for local protection consistent with the 2012 ESEE Analysis, together with a 20-foot buffer around the identified wetland to account for margins of error during the inventory process. The development standards contained in Sections 17.60.120 through 180 shall only apply to lands within the wetland boundary as identified by a jurisdictional delineation.
- B. Wetland mitigation sites approved by DSL.

17.60.0100. Survey Requirements. A site-specific topographical survey, prepared by a licensed surveyor, shall be submitted with any development application affecting land within the WRD. This survey shall show two-foot contour lines for the area within this special district, and the following:

- A. Delineations of any jurisdictional wetlands on the site.
- B. Approved or proposed DSL wetland mitigation sites.

17.60.0110. Exempt Uses and Activities within Wetland Protection Areas. The following developments, activities, and associated uses shall be exempt from the provisions of this Chapter, except for Notification provisions contained in Section 17.60.190, provided that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements:

- A. Temporary emergency procedures necessary for the immediate safety or protection of life or property, including removing hazardous trees and bank stabilization. For trees that pose a hazard due to threat of falling, the tree should be left in the wetland protection area after felling, if possible.
- B. Removal of refuse or any fill that is in violation of local, state, or federal regulation.
- C. Implementation of erosion and sedimentation control measures or flood control measures, such as maintenance dredging, bank protection measures that utilize bio-engineering methods, and other similar measures approved by the City of Junction City and any other applicable local, state or federal regulatory agency.
- D. Maintenance of existing: 1) structures, 2) impervious surfaces, and 3) landscaped areas. This subsection includes, but is not limited to:
 - 1. On-going maintenance of pre-existing landscaped areas, including perimeter mowing, as long as there is no excavation, filling or reduction of the wetland and best management practices are followed. Use of integrated pest management methods is recommended, as is the use of mechanical means (e.g. hand pulling) for removal or control of nuisance plants. Use of federally approved herbicide technology for use in or near open water is permitted. Herbicide applications should follow the label instructions, especially with cautions against use in or near open water.
 - 2. Operation, maintenance, or repair of existing development, such as repair and use of existing buildings, roads, paths, utilities, bridges, railroads, culverts, fences, flood control structures, drainageways or facilities, detention facilities, water quality facilities, and other similar structures and impervious surfaces, provided that the activity does not further alter or increase the impact to, or encroach further within the wetland.
 - 3. Maintenance of existing drainage ways, ditches, or other similar structures shall be designed to maintain flow at original design capacity and mitigate upstream flooding, avoid sedimentation, and ensure that any spoils are placed in uplands.
- E. Replacement of a permanent legal nonconforming structure in existence at the date of adoption of this Chapter with a structure on the same building footprint, if

it does not disturb additional area, and in accordance with the provisions of Junction City Municipal Code Chapter 17.125.

- F. Replacement of existing vegetation in conjunction with an approved use.
 - G. Wetland restoration and rehabilitation activities, including restoration and enhancement of native vegetation. Uses permitted within DSL-approved wetland mitigation sites are limited to those uses authorized by DSL.
 - H. Continuance of farming practices such as grazing, plowing, planting, cultivating, and harvesting that existed or occurred on the property prior to the date of adoption of these provisions.
 - I. Educational activities, scientific research, and passive outdoor recreational activities such as bird watching.
 - J. Site investigative work and studies necessary for preparing and processing proposals for development, including, but not limited to hand-dug holes for soils tests, water quality sampling, wetland investigations; provided, that any disturbance of the wetland shall be the minimum necessary to carry out the work or studies.
 - K. Non-federal forest management practices subject to Oregon's Forest Practices Act conducted in any non-navigable water.
 - L. Fill or removal for a change in the point of diversion to withdraw surface water for beneficial use, provided the diversion is:
 - 1. Necessitated by a change in the location of the surface water; and
 - 2. Authorized by the Water Resources Department.
- 17.60.0120. **Permitted Activities Within Wetland Protection Areas.** The following uses may be permitted outright within a wetland protection area, if they meet the requirements of this Chapter and applicable permits from the Oregon Division of State Lands and the U.S. Army Corps of Engineers are obtained. The application shall be considered under the procedure and criteria established under Junction City Municipal Code Section 17.150.070. The activities are subject to any mitigation that may be required by the City or other applicable state or federal regulatory agency:
- A. If permitted within the base zone, one single-family dwelling and related appurtenances such as driveway on a lot legally created prior to the date of adoption of these provisions.
 - B. Paths and bridges for pedestrians and bicycles, provided that the trail surface shall meet all other requirements including water quality standards set forth in the City of Junction City Public Works Development Standards or other local regulations;
 - C. New passive and active recreational uses, including non-water dependent uses, provided:
 - 1. The facility is designed for public use;
 - 2. The facility satisfies a public need that outweighs the harm, if any, to other wetlands functions and values. The determination of public need shall

include facility needs as identified in the Parks and Paths of Junction City Plan; and

3. The facility meets all other review standards.

- D. Water dependent uses, such as piers, boat launches and other similar facilities.
- E. Construction of public facilities and infrastructure, including but not limited to: water supply, sewer lines and pump stations, electric power, telephone, cable television, gas and transportation for persons and freight. Construction and maintenance activities shall be designed to avoid sedimentation and other discharges into the wetland or waterway and to meet the City of Junction City's Public Works Development Standards. Installation of culverts or other improvements that place existing wetlands within pipes shall be minimized to the extent needed to facilitate development of needed public facilities such as roads.
- F. Divisions of property authorized in accordance with the requirements of Junction City Municipal Code Title 16, provided that the lots are designed to accommodate the construction of a permitted use outside of the wetland area or on wetland mitigation sites. The City may accept dedication of such areas to the City or land trust as part of the land division approval process. Access roads and utilities serving the proposed division may be permitted within the wetland only if the City of Junction City determines that no other feasible alternative exists and when consistent with this Chapter.

17.60.0130. **Conditional Uses within Wetland Protection Areas.** The following activities are permitted when authorized in accordance with the requirements of Junction City Municipal Code Chapter 17.130 :

- A. Parks and recreational facilities that are not otherwise exempt or permitted under the provisions of this Chapter.
- B. Private construction of transportation facilities not identified to meet a public need.

17.60.0140. **Prohibited Activities Within Wetland Protection Areas.** The following activities are prohibited within a wetland protection area except as permitted in Sections 17.60.110 through 130 or Section 17.60.180.

- A. Placement of new structures or impervious surfaces.
- B. Excavation, grading, or fill.
- C. Dumping, piling, or disposal of refuse, yard debris, or other material.
- D. Planting of any state designated noxious weeds as established under OAR 603-052-1200.

17.60.0150.

- A. **Standards.** Proposals for development within the WRD shall be reviewed for compliance with this Chapter. The approving authority shall base its decision on the following criteria in addition to the required criteria for any other permit or approval that is being sought. Approvals shall be based on compliance with the

following mitigation sequencing guidelines that appear in order of preference, during the design, construction and operation of the proposal: The proposed activity is allowed under the requirements of the base zone.

- B. The proposed project complies with the provisions of Sections 17.60.050 through 140 of this Chapter.
- C. Except when permitted by Section 17.60.120, above, there are no other reasonably feasible options or locations outside of the Wetland Protection Areas for the proposed activity on the subject property.
- D. The proposed activity is designed, located, and constructed to minimize impacts on the wetland or wetland mitigation site, and their respective vegetation, flood storage capacity, and water quality. Minimization of impacts can include limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts.
- E. Where unavoidable adverse impacts are identified, mitigation plans shall be required. If State or Federal agency has jurisdiction regarding development impacts within the wetland protection area and they require mitigation for those impacts, the City will not impose additional mitigation requirements over the same area. Those portions of development impacts authorized under Sections 17.60.130 and 180 that are not mitigated through a State or Federal agency will be subject to local mitigation requirements, as addressed in Section 17.60.160.

17.60.0160. Local Mitigation Standards. The following standards would apply to activities authorized under Sections 17.60.130 or 180 that impact wetland areas and that are not otherwise mitigated by State or Federal agencies having jurisdiction. The Planning Commission may allow some degree of flexibility to the standards based on the specific location and level of impact:

- A. **When Mitigation is Required:** Mitigation will be required in circumstances where there is wetland fill of more than 2,000 square feet of wetland area. This would not include temporary disturbances that are restored after project completion.
- B. **Standard for Mitigation:**
 - 1. Mitigation should occur in the following order of preference, depending upon the specific location and level of impact:
 - a. On-site mitigation as close to the impact area as reasonably feasible;
 - b. Off-site in the same drainage systems or within an approved wetland mitigation bank or fee-in-lieu program that contains Junction City within its service area;
 - c. Off-site and not within the same drainage system.

- C. **Mitigation ratio.** Mitigation for impacts shall require a mitigation ratio of 1:1 ; however if the quality of the wetland is enhanced or restored per subsection (d) the ratio may be lowered with Planning Commission approval.
- D. **Mitigation Plan.** When a local mitigation plan for impact to a significant natural resource is proposed or required as part of a development application, the applicant shall submit a mitigation plan prepared by a qualified professional with demonstrated experience in developing mitigation plans for the specific impacted resource.
1. The mitigation plan shall document the location of the impact, the existing conditions of the resource prior to impact, presence of invasive species, the location of the proposed mitigation area, a detailed planting plan of the proposed mitigation area with species and density, and a narrative describing how the resource will be replaced, and how debris and invasive species will be removed.
 - a. The mitigation plan shall comply with all applicable State and Federal regulations, in addition to the City's standards. The City may approve a development but shall not issue a building permit until all required State and Federal permit approvals have been granted and copies of those approvals have been submitted to the City.
 - b. The applicant or property owner of a development subject to an approved mitigation plan shall provide assurance of completion in the form of a surety or post a performance bond, cash, negotiable security deposit, or a letter of credit, or other guarantees approved by the City Attorney satisfactory to the City that is equal to 120% of the value of the improvements installed pursuant to the plan for a 2-year period. The bond assurance shall be posted in place before the issuance of development permits to ensure the success of mitigation improvements and the survival of the plants. The assurance bond or letter of credit will be released by the City upon receiving satisfactory proof that the mitigation measures have been successfully implemented per subsection (c) below. If mitigation improvements fail during the 2-year bonding period, the bond assurance shall either be forfeited and used by the City to correct the problem pursuant to the approved mitigation plan, or the bond period may be extended for a 2½-year period with Planning Commission's approval to allow for another replanting strategy. When the City of Junction City, or another unit of government, is the applicant, it must adhere to the standards in this section, but an assurance a performance bond is not required.
 - c. A report on the survival and health of planted vegetation, and the status of invasive species, shall be performed by a qualified

professional at the expense of the applicant, and will be provided to the City of Junction City between 18 and 24 months from the initial planting that describes the health of all vegetation and shows pictures of the vegetation. The City may arrange an on-site inspection to verify information contained in the report. If the survival rate for tree and shrub species is below 80%, a replanting strategy shall be prepared, approved, and executed within 6 months of the report, with a subsequent report on survival provided to the City of Junction City between 12 and 18 months from the time of the second planting. At this point, if the survival rate is still below 80%, the bond described in subsection (b) will either be forfeited or extended for a 2½-year period with Planning Commission's approval. If at the end of the extension period, the survival rate is still less than 80%, the bond will be forfeited.

- d. The following table summarizes the quality levels, mitigation requirements and expected condition of the significant wetlands areas after successful completion of the mitigation plan:

Existing Resource Quality	Mitigation Requirements/Expected Future Resource Quality
<i>Good Quality:</i> Little enhancement potential per the Local Wetland Inventory assessment or other wetland assessment by a qualified professional. City staff will verify existing condition.	Preserve or enhance per approved mitigation plan;
<i>Marginal Quality:</i> Moderate enhancement potential per the Local Wetland Inventory assessment or other wetland assessment by a qualified professional. City staff will verify existing condition.	Restore to Good Quality per approved mitigation plan; Invasive species are removed and are not persisting.
<i>Degraded Quality:</i> High enhancement potential per the Local Wetland Inventory assessment or other wetland assessment by a qualified professional; Farmed or otherwise converted. City staff will verify existing condition.	Enhance to at least Marginal Quality; A smaller ratio of 1.0 (impact area) to 0.5 (mitigation area) may be allowed for restoration to Good Quality.

17.60.0170. Conditions. Reasonable conditions may be imposed in connection with development within or adjacent to the WRD to ensure that the purposes of this Chapter are met.

17.60.0180. Variance. The provisions of this Chapter may be varied on a case-by-case basis. The City may grant a variance only if it finds that:

- A. Through application of this Chapter, the property has been rendered not buildable;
- B. The applicant has exhausted all other options available under this Chapter to relieve the hardship;
- C. The variance is the minimum necessary to afford relief;
- D. All state and federal permits required for authorization of wetland impacts are obtained.
- E. The application shall be considered under the procedure and criteria established under Junction City Municipal Code 17.140. In addition, such a request shall be submitted to the Oregon Department of Fish and Wildlife for a mitigation recommendation pursuant to OAR 635-415 "Fish and Wildlife Habitat Mitigation Policy."

17.60.0190. Notification and Coordination with State Agencies.

- A. Junction City shall notify the Oregon Division of State Lands in writing of all applications to Junction City for development activities, including development applications, building permits, and other development proposals, that may affect any wetland identified in the Local Wetlands Inventory. This applies for both significant and non-significant wetlands.
- B. When reviewing wetland development permits authorized under this Chapter, the approving authority shall consider recommendations from the Oregon Department of Fish and Wildlife regarding OAR 635-415 "Fish and Wildlife Habitat Mitigation Policy."

17.60.0200. Compliance with Conditions of Approval. Compliance with conditions imposed on development within the WRD and adherence to approved development plans shall be required. Any departure from these conditions of approval and approved plans constitutes a violation of this Chapter.

17.60.0210. Violations. Activities within the WRD not authorized under this Chapter are unlawful. The City shall seek compliance with the requirements of this Chapter and the resolution of violations through the procedures below. These procedures are not exclusive; may be exercised singly, simultaneously, or cumulatively; may be combined with any other remedies authorized under law; and may be exercised in any order.

- A. Voluntary cooperation to resolve violations is the preferred enforcement procedure when appropriate to the circumstances. Violations causing ongoing

degradation of natural resources or repeated violations by the same individual, firm or corporation are not appropriate for voluntary enforcement procedures.

- B. Wetland restoration shall be required for violations that result in unauthorized construction, grading, excavation, or placement of fill material within the WRD. The purpose of the restoration requirements shall be to mitigate impacts to vegetation, soils and hydrology and may include vegetation planting, fill removal, backfilling of excavated areas, restoration of ground surface contours, restoration of hydrological processes or other actions. Restoration recommendations shall be solicited from the Oregon Department of Fish and Wildlife and Oregon Department of State Lands.
 - C. Violations involving placement of fill material, excavation, grading or alteration of material within a wetland shall be reported to the Oregon Department of State Lands and the U.S. Army Corps of Engineers, in addition to any local actions taken per this Section of the Code.
 - D. Failure of an individual, firm, or corporation to remedy a documented violation may be processed in accordance with the Enforcement provision in Junction City Municipal Code Section 17.150.
 - E. Penalties may be levied in accordance with the Penalty provision in Junction City Municipal Code Section 17.150.
- 17.60.0220. **Overlay Boundary Corrections and Refinements.** The boundaries for the WRD are approximate. The boundaries of the WRD are based on the locations of the significant wetlands identified in the City's Local Wetland Inventory.
- A. Overlay boundary corrections and refinements will be processed administratively. District corrections will be made to correct map errors, such as when the map does not properly reflect the Local Wetland Inventory data. An overlay boundary refinement is an adjustment made, based on professional analyses, to refine the boundary of the WRD. WRD refinements must be made by submittal of delineations of significant wetlands that are approved by the Oregon Department of State Lands (DSL) or by onsite wetland determinations by DSL when delineations are not needed for other purposes.
- 17.60.0230. **Severability.** If any clause, sentence, paragraph, section, or part of this Chapter or the application thereof to any person or circumstances shall be judged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered. The decision shall not affect or invalidate the remainder of any part thereof and to this end the provisions of each clause, sentence, paragraph, section, or part of this law are hereby declared to be severable.